

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RACINE EDUCATION ASSOCIATION, Complainant

vs.

**RACINE UNIFIED SCHOOL DISTRICT
and THE BOARD OF EDUCATION OF
THE RACINE UNIFIED SCHOOL DISTRICT**, Respondents

Case 150
No. 55059
MP-3288

Decision No. 29184-B

Appearances:

Weber & Cafferty, S.C., Attorneys at Law, 2932 Northwestern Avenue, Racine, Wisconsin 53404, by **Mr. Robert K. Weber**, on behalf of the Complainant.

Melli, Walker, Pease & Ruhly, S.C., Attorneys at Law, 119 Martin Luther King, Jr. Boulevard, P.O. Box 1664, Madison, Wisconsin 53701-1664, by **Mr. Douglas E. Witte**, on behalf of the Respondents.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On April 11, 1997, the Racine Education Association filed a complaint with the Wisconsin Employment Relations Commission wherein it alleged that the Racine Unified School District and its Board of Education had interfered with, restrained and coerced Association representatives in the exercise of their duty of fair representation in violation of Sec. 111.70(3)(a)1, Stats. On September 25, 1997, the District filed its answer wherein it denied it engaged in individual bargaining in order to avoid complying with the terms of a settlement agreement and denied it committed a violation of Sec. 111.70(3)(a)1,

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Stats. The Commission appointed David E. Shaw, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order in the matter. Hearing in the matter was set for October 7, 1997.

On September 30, 1997, the District filed a motion to indefinitely postpone hearing in the matter on the basis that the Association had filed a complaint in Racine County Circuit Court, Case 97-CV-0963, based upon the same facts and circumstances as the complaint filed with the Commission, and a bench decision dismissing the Association's complaint in its entirety had been issued by the Circuit Court on September 29, 1997, which the District felt resolved the issues in the complaint filed with the Commission. The District's motion to postpone was granted over the Association's objection, however, the parties agreed upon a tentative hearing date pending the District's filing of a motion to dismiss and the parties' filing of briefs in response to that motion. Due to the delay in receiving the transcript of the court proceedings, that schedule was extended and the tentative hearing date was changed to December 1, 1997.

On November 4, 1997, the District filed its motion to dismiss based upon the Order of the Circuit Court in Case 97-CV-0963 dismissing the Association's court action in its entirety and with prejudice and the application of the legal doctrine of claim preclusion. On November 17, 1997, the Association filed its brief in opposition to the motion. On November 18, 1997, the District filed its reply brief in support of its motion. On November 25, 1997, the Examiner issued Findings of Fact, Conclusions of Law and Order Holding Matter in Abeyance pending the outcome of the Association's appeal of the Circuit Court's decision. On September 23, 1998, the Court of Appeals issued its decision affirming the decision of the Circuit Court in Case 97-CV-0963. By letter of October 19, 1998, the Association advised the Examiner that it was not appealing the decision of the Court of Appeals.

Based upon the record and the arguments of the parties, the Examiner makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. On April 9, 1997, the Racine Education Association, hereinafter the Association, and Todd Johnson, an individual teacher employed by the Racine Unified School District and represented by the Association, filed a "Summons" and a "Petition and Complaint For a Declaratory Judgement to Enforce a Settlement Agreement and For Provisional and Preemptory Relief In the Form of a Writ of Mandamus" against the Racine Unified School District, hereinafter the District, and its Board of Education in Racine County Circuit Court, Case 97-CV-0963, attached hereto as "Appendix A" (without attachments) and incorporated herein.

2. On April 11, 1997, the Association filed the complaint of prohibited practice in this case with the Commission against the District and its Board of Education which complaint is attached hereto as "Appendix B" (without attachments) and incorporated herein.

3. The District filed a motion for summary judgement in the proceeding in Case 97-CV-0963, and on September 29, 1997, Judge Simanek issued a bench decision in that case granting the District's motion on the basis that the case was moot. On October 21, 1997, Judge Simanek issued an Order For Judgement in which he dismissed the Association's action with prejudice. The Association timely appealed the decision of the Circuit Court to the Court of Appeals.

4. The factual circumstances underlying the Association's action in Circuit Court are essentially the same as those underlying its claims in the complaint filed with the Commission in this case.

5. On September 23, 1998, the Court of Appeals issued its decision and order affirming the decision of the Circuit Court in Case 97-CV-0963. By letter of October 19, 1998, the Association advised the Examiner that it was not appealing the decision and order of the Court of Appeals. The time period for appealing the Court of Appeals decision has elapsed.

Based upon the foregoing Findings of Fact, the Examiner makes the following

CONCLUSIONS OF LAW

1. The Racine County Circuit Court has concurrent jurisdiction over allegations of violations of the Municipal Employment Relations Act (MERA) pursuant to Sec. 111.07(1), Stats., and Sec. 111.70(4)(a), Stats., and therefore is a court of competent jurisdiction with regard to the violations of MERA alleged in this complaint.

2. Pursuant to the decision and order of the Court of Appeals affirming the decision of the Racine County Circuit Court in Case 97-CV-0963, and the decision of the Racine Education Association not to appeal that decision, and the time period for appealing the Court of Appeal's decision having elapsed, the decision of the Circuit Court in Case 97-CV-0963 constitutes a final judgment for purposes of the application of the doctrine of claim preclusion. All of the factors necessary for the doctrine of claim preclusion to the complaint filed in this case are now present. Therefore, the Racine Education Association is precluded from litigating the allegations in its complaint in this case based upon the final judgment of the Racine County Circuit Court in Case 97-CV-0963.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Examiner makes and issues the following

ORDER

The complaint filed by the Racine Education Association in this case is dismissed in its entirety.

Dated at Madison, Wisconsin, this 25th day of November, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

David E. Shaw /s/

David E. Shaw, Examiner

RACINE SCHOOL DISTRICT

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

On November 25, 1997, this Examiner issued his Findings of Fact, Conclusions of Law and Order Holding Matter in Abeyance wherein he concluded that all of the elements necessary for the application of the legal doctrine of claim preclusion to the instant complaint were present, except for a "final judgment" on the merits due to the Association's appeal of the decision of the Racine County Circuit Court in Case 97-CV-0963. The Court of Appeals having affirmed that decision of the Circuit Court, and the Association having advised the Examiner it was not appealing the decision and order of the Court of Appeals, and the time for filing such an appeal having elapsed, all of the elements necessary for the application of the doctrine of claim preclusion are now present, i.e., there is an identity of parties in Case 97-CV-0963 in this case, there is an identity between the causes of actions in Case 97-CV-0963, and there is a final judgment by a court of competent jurisdiction in Case 97-CV-0963. Therefore, the Examiner has concluded that the Association is precluded by that final judgment from litigating the allegations raised in its complaint in this case and has dismissed the complaint in its entirety.

Dated at Madison, Wisconsin, this 25th day of November, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

David E. Shaw /s/

David E. Shaw, Examiner

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